

ORIGINAL

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 15 2004

JAMES R. LARSEN, CLERK
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SPOKANE, WASHINGTON

4 UNITED STATES DISTRICT COURT
5 FOR THE EASTERN DISTRICT OF WASHINGTON
6

7 Chauncey Thoeny,
8 Plaintiff,
9

10 vs.

11 Aetna Adjustment Company, Inc.; Lea
T. Roth and John Doe Roth, husband
12 and wife.

13 Defendants.

Case No.: **CV-04-0199-FVS**

COMPLAINT

(Unlawful Debt Collection Practices)

14 Chauncey Thoeny, by and through his attorney, Michael D. Kinkley of
15 Michael D. Kinkley, P.S., alleges the following:
16
17

18 I. NATURE OF ACTION

19 This is an action for damages and remedies against defendants Aetna Adjustment
20 Company, Inc.; Lea T. Roth and John Doe Roth, wife and husband.; pursuant to
21 the Fair Debt Collection Practices Act, 15 USC § 1692, et seq., (hereinafter
22 "FDCPA"); for damages and remedies pursuant to the State of Washington
23 Collection Agency Act, RCW 19.16, and especially the Prohibited Debt Collection
24
25

Complaint - 1

Michael D. Kinkley P.S.
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1 Practices Section, RCW 19.16.250, (WCAA) which prohibits debt collectors from
2 engaging in abusive, deceptive, and unfair practices; and for damages and
3 remedies pursuant to the Washington State Consumer Protection Act (RCW 19.86
4 et seq.) ("WCPA"); and for wrongful garnishment under Washington State Law.
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7 II. JURISDICTION & VENUE

8 2.1 Jurisdiction of this Court arises under 15 USC § 1692k(d), 28 USC § 1337,
9 and 28 USC § 1331. Supplemental jurisdiction exists for state law claims
10 pursuant to 28 USC § 1367. Declaratory relief is available pursuant to 28
11 USC § 2201 and § 2202.
12

13 2.2 Venue of this Court is appropriate since the events alleged in this complaint
14 occurred in Eastern District Washington, and the plaintiff resides within the
15 territorial jurisdiction of the court.
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17 2.3
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19 III. FEDERAL QUESTION 20 SUBJECT MATTER JURISDICTION

21 3.1 Plaintiff, is a "consumer" as defined by the FDCPA, 15 USC § 1692a(3).

22 3.2 Defendants Aetna Adjustment Company, Inc.; Lea T. Roth were each
23 attempting to collect a "debt" as defined by FDCPA, 15 USC § 1692a(5).
24
25

1 3.3 The alleged debt was an obligation or alleged obligation of the Plaintiff to
2 pay money arising out of a transaction primarily for personal, family, or
3 household purposes.
4

5 3.4 Defendants Aetna Adjustment Company, Inc.; Lea T. Roth and John Doe
6 Roth, wife and husband are each "debt collectors" as defined by FDCPA, 15
7 USC § 1692a(6).
8

9 3.5

10 IV. PARTIES

11 4.1 Now, and at all relevant times, Mr. Chauncey Thoeny was a resident of the
12 state of Washington residing within the territorial jurisdictional area of the
13 United States District Court for the Eastern District of Washington.
14

15 4.2 Defendant Aetna Adjustment Company, Inc. is a Washington Corporation
16 engaged in the business of collecting debts within the State of Washington
17 which were originally owed another with its principal place of business in
18 Washington located at 1424 N. Argonne Rd., Spokane, WA, 99212.
19

20 4.3 The principal purpose of Defendant Aetna Adjustment Company, Inc.'s
21 business activities is the collection of debts originally owed another using
22 the mails and telephone.
23
24
25

1 4.4 Defendant Aetna Adjustment Company, Inc. regularly attempts to collect
2 debts alleged to be due another or alleged to be originally owed to another.

3 4.5 Defendant Aetna Adjustment Company, Inc. is doing business as a "debt
4 collector" in the Eastern District of Washington of the United States District
5 Court as defined by the FDCPA, 15 USC § 1692a(6).
6

7 4.6 Defendant Lea T. Roth regularly attempts to collect debts alleged to be due
8 another or alleged to be originally owed to another.
9

10 4.7 All acts done by Lea T. Roth were done on her own behalf and on behalf of
11 John Doe Roth, whose true name is unknown, and on behalf of Aetna
12 Adjustment Company, Inc.
13

14 4.8 All acts done by the collectors for Aetna Adjustment Company, Inc. were
15 done on behalf Aetna Adjustment Company, Inc.
16

17 4.9
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19 V. FACTS 20

21 5.1. On April 12, 2001, Michael Beyer, on behalf of Aetna Adjustment
22 Company, Inc. filed a Summons and Complaint filed in Spokane County
23 District Court.

24 5.2. On August 14, 2001, defendant Aetna filed an "Affidavit of Service
25 Summons and Complaint" signed by Pete Terhaar allegedly on April 19,

1 2001 alleging service on defendant Chauncey C. Thoeny by delivery to
2 Defendant's father at 25302 E. Marve Lane Newman Lake, WA.

3
4 5.3. Mr. Chauncey Thoeny did not live at his father's home.

5 5.4. On August 8, 2001, a Judgment was entered against Plaintiff Chauncey
6 Thoeny by District Court Judge Harold Clark.

7
8 5.5. On August 14, 2001, Plaintiff Aetna Adjustment Company, Inc. through its
9 attorney Michael Beyer filed Motion and Affidavit for Default Judgment and
10 Default Judgment".

11
12 5.6. On September 6, 2001, defendant Plaintiff Aetna Adjustment Co., Inc
13 through its attorney Michael Beyer obtained a Writ of garnishment "A" from
14 the Washington State, Spokane County District Court Clerk as a continuing
15 lien on earnings on Mr. Chauncey Thoeny's wages against Adenbeck's
16 Electrical Contractors, Garnishee Defendant.

17
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19 5.7. On September 21, 2001, Garnishee Defendant, Adenbeck's Electrical
20 Contractors filed an Answer indicating that it was withholding wages from
21 Chauncey Thoeny.

22
23 5.8. On October 22, 2001, Attorney Howard Herman called attorney Michael
24 Beyer at the phone number on the pleadings, but the phone was answered by
25

1 a representative of Aetna Adjustment Company, Inc. Mr. Howard Herman
2 notified Defendant Aetna Adjustment that he had reviewed the court file and
3 the judgment against Chauncey Thoeny was void for failure of service of the
4 Summons and Complaint, and that the affidavit of service does not even
5 allege adequate service on its face.
6

7
8 5.9. On October 25, 2001, Defendant Aetna, through attorney Michael Beyer,
9 filed a "Release of Garnishment"

10
11 5.10. On October 24, 2002, Defendant Aetna Adjustment Co., Inc through its
12 attorney Michael Beyer obtained a Writ of garnishment "B" (continuing lien
13 on earnings) from the Washington State, Spokane County District Court
14 Clerk as a continuing lien on Chauncey Thoeny's earnings against
15 Adenbeck's Electrical Contractors, Garnishee Defendant.
16

17 5.11. On December 3, 2002, Garnishee Defendant, Adenbeck's Electrical
18 Contractors filed an Answer indicating that it was withholding wages from
19 Chauncey Thoeny.
20

21 5.12. On February 10, 2003, Garnishee Defendant, Adenbeck's Electrical
22 Contractors filed a second Answer indicating that it was withholding wages
23 from Chauncey Thoeny.
24
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1 5.13. On June 11, 2003, Plaintiff Chauncey Thoeny filed in the Spokane County
2 District court and served on Aetna Adjustment Co., Inc.: a Motion to Quash
3 the Garnishment B, a Motion to Vacate the Default Judgment, Declaration of
4 Chauncey Thoeny, Declaration of attorney Howard Herman, Declaration of
5 Adrienne Thoeny, a Memorandum Regarding Vacating Judgment for Lack
6 of Personal Jurisdiction, and exhibits showing the service a not at Chauncey
7 Thoeny's abode and a Note for hearing scheduling the matter for June 27,
8 2003, and a Special Notice of Appearance to Contest Jurisdiction.

11 5.14. On June 16, 2003, Aetna Adjustment Company filed a "release of
12 garnishment" which at that time had no legal effect under Washington law.

14 5.15. On June 20, 2003, Chauncey Thoeny obtained an ex-parte Order to Show
15 Cause why the Default Judgment should not be vacated, ordering defendants
16 to appear on June 27, 2003, and show cause why the default Judgment
17 should not be vacated.

19 5.16. On June 20, 2003, Aetna Adjustment Company, Inc. was served with the
20 Order to Show cause.

22 5.17. On June 27, 2003, Aetna Adjustment Company, Inc. did not respond to the
23 Order except to appear, without having filed any response, to request a
24
25

1 continuance of the hearing. Over objection of Chauncey Thoeny, the hearing
2 was continued to July 3, 2003.

3
4 5.18. On July 3, 2003, the Spokane County District Court, Judge Gregory Tripp
5 conducted a the hearing regarding the Order to Show why the Default
6 Judgment should not be vacated. Based on defendant Aetna's argument the
7 Spokane County District Court refused to vacate the judgment.
8

9 5.19. On July 25, 2003, the hearing was held for Presentment (contested) of the
10 Order Denying Motion to Vacate.
11

12 5.20. On July 25, 2003, Chauncey Thoeny entered a timely appeal to the Superior
13 Court for the State of Washington, Spokane County.
14

15 5.21. On January 16, 2004, the Appeal hearing was held before Judge Robert
16 Austin of the Spokane County Superior Court.
17

18 5.22. On February 20, 2004, Superior Court Judge Robert Austin entered the
19 "Decision Reversing the Spokane County District Court, Vacating for Lack
20 of Personal Jurisdiction the Judgment Entered on August 8, 2001, Quashing
21 Garnishment Writ B, Dismissing the Action."
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1 5.23. The Superior Court vacated the default judgment and quashed the
2 garnishment. Subsequently Chauncey Thoeny's wages were returned to him
3 only after the judgment of the Superior Court.
4

5 5.24. Defendant Aetna Adjustment garnished Mr. Chauncey Thoeny's wages with
6 information that the judgment was void.
7

8 5.25. Defendant Lea T. Roth signed an affidavit for garnishment with information
9 that the judgment was void.
10

11 VI. DEFENDANT VIOLATED THE FAIR DEBT
12 COLLECTION PRACTICES ACT

13 6.1. The defendants, by and through their agents and employees, and their
14 policies and procedures, have violated the FDCPA which has caused damage
15 to plaintiff and the class.

16 6.2. The defendants violated 15 U.S.C. §1692e, and 15 U.S.C. §1692e(3) by
17 using false, deceptive, and/or misleading representations and/or means .
18

19 6.3. The defendants violated 15 U.S.C. §1692f by attempting to collect and
20 collecting a debt using unfair and/or unconscionable means
21

22 VII. VIOLATION OF THE WASHINGTON
23 COLLECTION AGENCY ACT

24 7.1. Defendant violated the prohibited practices provisions of the Washington
25 State statute regulating Collection Agencies and prohibiting certain practices

1 of Collection Agencies doing business in the state of Washington (RCW
2 19.16).

3
4 7.2. Defendant, by and through its agents and employees, and its policies and
5 procedures, have violated the WCAA which has caused damage to Plaintiff.
6

7
8 VIII. VIOLATION OF THE CONSUMER PROTECTION ACT

9 8.1. Violation of the Washington State Collection Agency Act is per se in the
10 public interest and a per se unfair trade practice in violation of the
11 Washington State Consumer Protection Act. (RCW 19.16.440). Defendants
12 have violated WCCA prohibited practices (RCW 19.16.250). Defendants
13 have violated the Washington Administrative code governing the actions of
14 collection agencies.
15

16 8.2. The business of collection agencies, as well as all acts and practices of
17 collection agencies, debt collectors, are subject to the Consumer Protection
18 Act, RCW 19.86 and subsequent sections.
19

20 8.3. The Consumer Protection Act of the State of Washington requires that all
21 collection agents, debt collectors, abstain from unfair or deceptive practices
22 or acts.
23
24
25

1 8.4. The defendant, by and through its agents and employees, its policies and
2 procedures, has engaged in deceptive and unfair acts and practices that have
3 caused injury to plaintiff.

4
5 8.5. Violation of the WCAA is a per se violation of the WCPA. Defendants have
6 violated the WCAA prohibited practices. Defendants have violated the
7 Washington Administrative code governing the actions of collection
8 agencies.

9
10 8.6. Defendant has engaged in unfair and deceptive acts and practices in
11 attempting to collect an alleged debt from the plaintiff.

12 8.7. Defendant Aetna is in the business of debt collection in trade or commerce.

13 8.8. Unlawful and Unfair Debt Collections is against public interest.

14 8.9. Wrongful garnishment is against public interest.

15 8.10. The defendant's actions were the direct cause of the plaintiff's injury to
16 plaintiff's property. As a result of the defendants' actions, plaintiff lost the
17 use, possession and enjoyment of his wages.
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19

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21 IX. WRONGFUL GARNISHMENT
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1 9.1. Garnishment B was based on a judgment that defendants Aetna and Lea T.
2 Roth knew, or should have known, was void for lack of service of the
3 Summons and Complaint.

4
5 9.2. The garnishment was quashed.

6 9.3. The judgment was declared void.

7 9.4. Defendants Lea T. Roth and Aetna knew, or should have known, that the
8 Affidavit for Garnishment B was invalid in form and false.

9
10 9.5. Defendants continued to pursue the garnishment after they became aware
11 that the judgment was void.

12 9.6. Plaintiff Chauncey Thoeny incurred attorney fees and costs in quashing the
13 garnishment in vacating the judgment.

14
15 9.7. Plaintiff Chauncey Thoeny suffered emotional distress as a result of the
16 continued wrongful garnishment.

17 9.8. Plaintiff Chauncey Thoeny was deprived of the use of his wages as a result
18 of the wrongful garnishment.

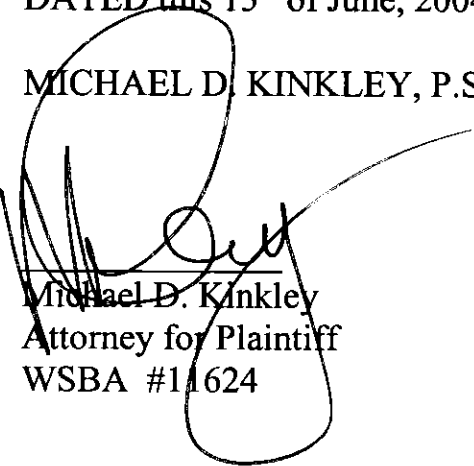
19
20 X. DEMAND

21 WHEREFORE, plaintiff Chauncey Thoeny demands judgment
22 against the defendants Aetna Adjustment Company, Inc.; Lea T. Roth and John
23 Doe Roth, husband and wife, as follows:
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- 1 (a) Actual damages;
- 2 (b) Statutory damages pursuant to the FDCPA, 15 U.S.C. §
- 3 1692k(a)(1).
- 4
- 5 (c) Costs and reasonable attorney's fees pursuant to 15 U.S.C. §
- 6 1692k(a)(3);
- 7
- 8 (d) Costs and reasonable attorney's fees pursuant to the Washington
- 9 Consumer Protection Act, RCW 19.86;
- 10
- 11 (e) Treble damages pursuant to the Washington Consumer
- 12 Protection Act, RCW 19.86;
- 13
- 14 (f) Declaratory Judgment that defendants' practices violate the Fair
- 15 Debt Collection Practices Act and/or the Washington Consumer
- 16 Protection Act, and/or Washington Collection Agency Act;
- 17
- 18 (i) for such other and further relief as may be just and proper.

19 DATED this 15th of June, 2004

20 MICHAEL D. KINKLEY, P.S.

21 
22 Michael D. Kinkley
23 Attorney for Plaintiff
24 WSBA #11624
25